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**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY**

PATIENT CARE ASSOCIATES LLC  
a/s/o C.D.,

Plaintiff,

v.

LIBERTY MUTUAL INSURANCE;  
ABC CORP. (1-10) (Said names being  
fictitious and unknown entities)

Defendants.

Civil Action No. 2:13-cv-02661-SDW-MCA

**ANSWER AND AFFIRMATIVE  
DEFENSES**

*Filed Electronically*

Defendant, Liberty Mutual Insurance (hereafter “Liberty Mutual”) by way of answer to the Complaint filed by Plaintiff Patient Care Associates LLC (hereinafter “Plaintiff”) in the above-captioned matter, states as follows:

**THE PARTIES**

1. Liberty Mutual is currently without sufficient information to admit or deny the allegations of paragraph 1 and therefore said allegations are denied and Plaintiff is left to his proofs. By way of further response, it is admitted that Plaintiff is not a network provider with Liberty Mutual.

2. Admitted.

3. With respect to the allegations contained in paragraph 3 of the Complaint, Liberty Mutual admits that it conducts business in Bergen County, New Jersey. Except as so admitted, Liberty Mutual denies each and every other allegation contained in paragraph 3 of the Complaint.

4. With respect to the allegations contained in paragraph 4 of the Complaint, Liberty Mutual admits only that Liberty Mutual maintains a self-funded group health benefit plan pursuant to the terms of the Employee Retirement Income Security Act of 1974 (“ERISA”), 29 U.S.C. § 1001, et seq. Except as so admitted, Liberty Mutual denies each and every other allegation contained in paragraph 4 of the Complaint.

5. With respect to the allegations contained in paragraph 5 of the Complaint, Liberty Mutual admits only that C.D. is an enrollee in the self-funded group health benefit plan of Liberty Mutual. Except as so admitted, Liberty Mutual denies each and every other allegation contained in paragraph 5 of the Complaint.

6. The allegations contained in paragraph 6 of the Complaint are legal conclusions to which no response is necessary. To the extent an answer is deemed necessary, Liberty Mutual denies each and every allegation contained in paragraph 6 of the Complaint.

### **SUBSTANTIVE ALLEGATIONS**

7. With respect to the allegations contained in paragraph 7 of the Complaint, Liberty Mutual admits only that Liberty Mutual maintains a self-funded group health benefit plan pursuant to the terms of the Employee Retirement Income Security Act of 1974 (“ERISA”), 29 U.S.C. § 1001, et seq. Except as so admitted, Liberty Mutual denies each and every other allegation contained in paragraph 7 of the Complaint.

8. Liberty Mutual denies each and every allegation contained within paragraph 8 of the Complaint.

9. Liberty Mutual denies each and every allegation contained within paragraph 9 of the Complaint. By way of further answer to the allegations in paragraph 9, Liberty Mutual states that charges by out-of-network providers are subject to the terms, limitations and conditions of the health benefit plan.

10. Liberty Mutual denies each and every allegation contained within paragraph 10 of the Complaint.

11. With respect to the allegations contained in paragraph 11 of the Complaint, Liberty Mutual admits only that Plaintiff submitted claims for reimbursement. Except as so admitted, Liberty Mutual denies each and every other allegation contained in paragraph 11 of the Complaint.

12. Liberty Mutual denies each and every allegation contained within paragraph 12 of the Complaint.

13. Liberty Mutual admits only that one or more appeals were submitted by Plaintiff, or by an entity purporting to act on Plaintiff's behalf. Except as so admitted, Liberty Mutual denies each and every other allegation contained in paragraph 13 of the Complaint.

14. Liberty Mutual denies each and every allegation contained within paragraph 14 of the Complaint.

15. The allegations contained in paragraph 15 of the Complaint are legal conclusions to which no response is necessary. To the extent an answer is deemed necessary, Liberty Mutual denies each and every allegation contained in paragraph 15 of the Complaint.

**FIRST COUNT**  
**(Violation of ERISA)**

16. Liberty Mutual incorporates by reference, all the answers to all the allegations of the first 16 paragraphs as if set forth at length herein.

17. The allegations contained in paragraph 17 of the Complaint are legal conclusions to which no response is necessary. With respect to the allegations contained in paragraph 17 of the Complaint, Liberty Mutual admits that Section 502(A) of ERISA provides plan beneficiaries with the right to bring an action to recover benefits under a benefit plan governed by ERISA. To the extent these allegations may be construed to allege or imply any liability against Liberty Mutual, they are denied.

18. With respect to the allegations contained in paragraph 18 of the Complaint, Liberty Mutual admits only that Liberty Mutual maintains a self-funded group health benefit plan pursuant to the terms of the Employee Retirement Income Security Act of 1974 (“ERISA”), 29 U.S.C. § 1001, et seq. Except as so admitted, Liberty Mutual denies each and every other allegation contained in paragraph 18 of the Complaint.

19. The allegations contained in paragraph 19 of the Complaint are legal conclusions to which no response is necessary. To the extent an answer is deemed necessary, Liberty Mutual denies each and every allegation contained in paragraph 19 of the Complaint.

20. The allegations contained in paragraph 20 of the Complaint are legal conclusions to which no response is necessary. To the extent an answer is deemed necessary, Liberty Mutual denies each and every allegation contained in paragraph 20 of the Complaint.

21. The allegations contained in paragraph 21 of the Complaint are legal conclusions to which no response is necessary. To the extent an answer is deemed necessary, Liberty Mutual denies each and every allegation contained in paragraph 21 of the Complaint.

22. The allegations contained in paragraph 22 of the Complaint are legal conclusions to which no response is necessary. To the extent an answer is deemed necessary, Liberty Mutual denies each and every allegation contained in paragraph 22 of the Complaint.

23. The allegations contained in paragraph 23 of the Complaint are bald, formulaic legal conclusions to which no response is necessary. To the extent an answer is deemed necessary, Liberty Mutual denies each and every allegation contained in paragraph 23 of the Complaint.

24. The allegations contained in paragraph 24 of the Complaint are bald, formulaic legal conclusions to which no response is necessary. To the extent an answer is deemed necessary, Liberty Mutual denies each and every allegation contained in paragraph 24 of the Complaint.

25. With respect to the allegations contained in paragraph 25 of the Complaint, Liberty Mutual admits only that Plaintiff submitted claims for reimbursement. Except as so admitted, Liberty Mutual denies each and every other allegation contained in paragraph 25 of the Complaint.

26. The allegations contained in paragraph 26 of the Complaint are legal conclusions to which no response is necessary. To the extent an answer is deemed necessary, Liberty Mutual denies each and every allegation contained in paragraph 26 of the Complaint.

27. The allegations contained in paragraph 27 of the Complaint are legal conclusions to which no response is necessary. To the extent an answer is deemed necessary, Liberty Mutual denies each and every allegation contained in paragraph 27 of the Complaint.

28. The allegations contained in paragraph 28 of the Complaint are legal conclusions to which no response is necessary. To the extent an answer is deemed necessary, Liberty Mutual denies each and every allegation contained in paragraph 28 of the Complaint.

29. The allegations contained in paragraph 29 of the Complaint are legal conclusions to which no response is necessary. To the extent an answer is deemed necessary, Liberty Mutual denies each and every allegation contained in paragraph 29 of the Complaint.

**WHEREFORE**, Liberty Mutual demands judgment dismissing Plaintiff's Complaint plus other such relief to which Liberty Mutual is entitled as a matter of federal and state law.

**SECOND COUNT**  
**(ERISA - Breach of Fiduciary Duty)**

30. Liberty Mutual incorporates by reference, all the answers to all the allegations of the first 29 paragraphs as if set forth at length herein.

31. The allegations contained in paragraph 31 of the Complaint are legal conclusions to which no response is necessary. To the extent an answer is deemed necessary, Liberty Mutual denies each and every allegation contained in paragraph 31 of the Complaint.

32. The allegations contained in paragraph 32 of the Complaint are legal conclusions to which no response is necessary. To the extent an answer is deemed necessary, Liberty Mutual denies each and every allegation contained in paragraph 32 of the Complaint.

33. The allegations contained in paragraph 33 of the Complaint are legal conclusions to which no response is necessary. To the extent an answer is deemed necessary, Liberty Mutual denies each and every allegation contained in paragraph 33 of the Complaint.

34. The allegations contained in paragraph 34 of the Complaint are legal conclusions to which no response is necessary. To the extent an answer is deemed necessary, Liberty Mutual denies each and every allegation contained in paragraph 34 of the Complaint.

35. The allegations contained in paragraph 35 of the Complaint are legal conclusions to which no response is necessary. To the extent an answer is deemed necessary, Liberty Mutual denies each and every allegation contained in paragraph 35 of the Complaint.

36. The allegations contained in paragraph 36 of the Complaint are legal conclusions to which no response is necessary. To the extent an answer is deemed necessary, Liberty Mutual denies each and every allegation contained in paragraph 36 of the Complaint.

**WHEREFORE**, Liberty Mutual demands judgment dismissing Plaintiff's Complaint plus other such relief to which Liberty Mutual is entitled as a matter of federal and state law.

**THIRD COUNT**  
**(Negligent Misrepresentation)**

37. Liberty Mutual incorporates by reference, all the answers to all the allegations of the first 36 paragraphs as if set forth at length herein.

38. The allegations contained within paragraph 38 of the Complaint are bald, formulaic legal conclusions to which no response is necessary. To the extent an answer is deemed necessary, Liberty Mutual denies each and every allegation contained within paragraph 38 of the Complaint.

39. The allegations contained within paragraph 39 of the Complaint are legal conclusions to which no response is necessary. To the extent an answer is deemed necessary, Liberty Mutual denies each and every allegation contained within paragraph 39 of the Complaint.

40. The allegations contained within paragraph 40 of the Complaint are legal conclusions to which no response is necessary. To the extent an answer is deemed necessary, Liberty Mutual denies each and every allegation contained within paragraph 40 of the Complaint.

41. The allegations contained within paragraph 41 of the Complaint are legal conclusions to which no response is necessary. To the extent an answer is deemed necessary, Liberty Mutual denies each and every allegation contained within paragraph 41 of the Complaint.

**WHEREFORE**, Liberty Mutual demands judgment dismissing Plaintiff's Complaint plus other such relief to which Liberty Mutual is entitled as a matter of federal and state law.

#### **FOURTH COUNT**

42. Liberty Mutual incorporates by reference, all the answers to all the allegations of the first 41 paragraphs as if set forth at length herein.

43. Liberty Mutual is without sufficient information to admit or deny the allegations contained within paragraph 43 of the Complaint. To the extent an answer is deemed necessary, Liberty Mutual denies each and every allegation contained in paragraph 43 of the Complaint.

**WHEREFORE**, Liberty Mutual demands judgment dismissing Plaintiff's Complaint and such other relief to which it is entitled under federal and state law.



**CONNELL FOLEY LLP**

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*Attorneys for Defendant Liberty Mutual  
Insurance*

DATED: May 15, 2013

By: s/Patricia A. Lee  
PATRICIA A. LEE

**AFFIRMATIVE DEFENSES**

1. The Complaint fails to state a claim upon which relief can be granted.
2. The Complaint is governed by the Employee Retirement Income Security Act of 1974 (“ERISA”), 29 U.S.C. §1001, et seq., and Plaintiff’s remedies thereunder as against Liberty Mutual are limited to payment of health benefits that were allegedly denied.
3. The Complaint is governed by the Employee Retirement Income Security Act of 1974 (“ERISA”), 29 U.S.C. §1001, et seq., and Plaintiff’s claims are pre-empted by ERISA.
4. Plaintiff has failed to exhaust the mandatory administrative remedies under the terms of the applicable health benefits plan and accordingly, this action is barred.
5. Plaintiff’s claims are barred by the express terms of the applicable health benefits plan.
6. Plaintiff seeks benefits that are not eligible for coverage according to the terms of the applicable health benefits plan.
7. Liberty Mutual did not owe any legal or contractual duty to Plaintiff.
8. Liberty Mutual did not violate any legal or contractual duty owed to Plaintiff.
9. Liberty Mutual acted reasonably and in good faith at all times.
10. Plaintiff’s complaint is barred by the equitable Doctrines of Waiver, Laches, Unclean Hands and/or Estoppel.
11. Plaintiff’s Complaint is barred by the doctrine of set-off.

**WHEREFORE**, Liberty Mutual demands judgment dismissing Plaintiff’s Complaint plus other such relief to which Liberty Mutual is entitled as a matter of federal and state law.

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*Attorneys for Defendant Liberty Mutual  
Insurance*

DATED: May 15, 2013

By: s/Patricia A. Lee  
PATRICIA A. LEE

**LOCAL CIVIL RULE 11.2 CERTIFICATION**

I, Patricia A. Lee, hereby certify pursuant to Local Civil Rule 11.2, that the above-captioned matter in controversy is not the subject of any other action pending in any court, or of any pending arbitration or administrative proceeding.

**CONNELL FOLEY LLP**  
85 Livingston Avenue  
Roseland, NJ 07068  
*Attorneys for Defendant Liberty Mutual  
Insurance*

DATED: May 15, 2013

By: *s/Patricia A. Lee*  
PATRICIA A. LEE

**CERTIFICATE OF SERVICE**

I, Patricia A. Lee, of full age, hereby certify that the original of the within Answer and Affirmative Defenses has been filed with the Clerk, United States District Court for the District of New Jersey, and that a copy of the within pleading has been served this date, via email and ECF, upon:

Andrew R. Bronsnick  
Massood & Bronsnick, LLC  
50 Packanack Lake Road East  
Wayne, New Jersey 07470-6663  
Counsel for Plaintiff

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

**CONNELL FOLEY LLP**  
*Attorneys for Defendant Liberty Mutual  
Insurance*

DATED: May 15, 2013

By: s/Patricia A. Lee  
Patricia A. Lee